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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of)	
)	
PETITION TO AMEND RULES)	
24.3 and 26.12 OF THE ARIZONA)	Supreme Court No. R-18-____
RULES OF CRIMINAL)	
PROCEDURE; AND RULE 24.1)	
RULES OF COURT PROCEDURE)	
FOR CIVIL TRAFFIC AND CIVIL)	
BOATING VIOLATIONS)	
_____)	

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, and Chair of the Supreme Court Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies (“the Task Force”) respectfully petitions this Court to amend Rules 24.3 and 26.12 of the Rules of Criminal Procedure and to add a new Rule 24.1 to the Rules of Court Procedure for Civil Traffic and Civil Boating Violations. The rule changes are set forth in Appendix A.

The Task Force recommended changes to various statutes that give judges greater discretion to mitigate penalties and surcharges when warranted by a

defendant's financial circumstances. That recommendation culminated in the Arizona Judicial Council's legislative proposals introduced and enacted by the legislature as HB 2313 (Laws 2018, Chap. 237, §9) and HB 2169 (Laws 2018, Chap. 113, §8). Both bills are effective January 1, 2019. An additional bill, also effective on January 1, 2019, HB 2527 (Laws 2018, Chap. __ §2) permits mitigation of Police Training Equipment assessment pursuant to A.R.S. §12-112.08.¹

Purpose and Explanation of the Proposed Rule Amendments. The proposed rule changes are consistent with the policies underlying the new legislation and to clarify that courts are permitted to mitigate certain monetary obligations contained in criminal sentences and civil traffic judgments - even after the sentence is pronounced. The proposed changes follow through on the Task Force's principles and should enable the courts to more effectively deal with individuals in the justice system experiencing serious financial challenges.

In criminal cases, Arizona case law currently limits a court's ability to change a sentence to those situations where a sentence is found to be unlawful or imposed in an unlawful manner pursuant to Rule 24.3, or to correct a clerical error pursuant to Rule 24. *See, e.g., State v. Superior Court*, 124 Ariz. 288, 603 P.2d 915 (1979); *State v. Falkner*, 112 Ariz. 372, 542 P.2d 404 (1975); *State v. Guthrie*, 110 Ariz.

¹ The statutory reference, §12-112.08, may change as two bills in the 2018 legislative session enacted the same numbered statutes. Legislative Council will renumber one of the statutes, probably by mid-June. Petitioner will correct the reference, if necessary, in his Reply.

257, 517 P.2d 1253 (1974); *State v. Serrano*, 234 Ariz. 491, 323 P.3d 774, (App. Div. 2, 2014); *State v. Thomas*, 142 Ariz. 201, 204, 688 P.2d 1093, 1096 (App. Div. 1, 1984); “[T]he trial court's jurisdiction in post-trial motions is limited to that set out in the Rules, and an exercise of that jurisdiction is permissible only upon the grounds specified therein.” *State v. Falkner*, *supra*. See also, *State v. Filipov*, 118 Ariz. 319, 326, 576 P.2d 507, 514 (Ariz. Ct. App. Div. 1, 1977) (“It is clear that Rule 24.3, Arizona Rules of Criminal Procedure does not permit a sentencing judge's reduction of an already lawfully imposed sentence”).

The proposed amendments to Criminal Rules 24.3 and 26.12 authorize courts to mitigate the fine and civil penalty at any time following sentencing, with the exception of a mandatory fine in a criminal case and the clean elections surcharge (ARS § 16-954). Even though a mandatory fine in a criminal case cannot be mitigated, the surcharges, except the clean elections surcharge, can be mitigated, consistent with the newly-enacted ARS §13-825. The proposal, consistent with HB 2527, also permits the mitigation of the Peace Officer Training Fund assessment under A.R.S. § 12-116.08.²

The proposed addition of Civil Traffic Rule 24.1 mirrors the changes made to Criminal Rule 24.3(c) with modifications to terminology consistent with the Civil Traffic Rules, and consistent with newly-enacted ARS § 28-1603 (Laws 2018, Chap.

² See footnote #1

113 § 8), which permits the court to mitigate a civil traffic penalty imposed pursuant to Title 28, Chapters 3, 5, 7 and 9.

By operation of law, if a fine or civil penalty is mitigated, all surcharges are reduced as they are a percentage component of the fine or civil penalty imposed.

II. Preliminary Comments. The proposed amendments have not been circulated to stakeholders for comment before filing. Therefore, an opportunity for comment as part of the Court's review is recommended. Due to the importance of this proposal, Petitioner requests the Court set a comment period ending October 15, 2018, with Petitioner's Reply due October 25, 2018, and consideration by the Court at its regular December rules agenda.

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure and the Rules of Court Procedure for Civil Traffic and Civil Boating Violations, as proposed in Appendix A.

RESPECTFULLY SUBMITTED this 8th day of May, 2018.

By /s/ _____
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APPENDIX A³

(language to be removed is shown in ~~strike through~~, new language is underlined)

Arizona Rules of Criminal Procedure

Rule 24.3. Modification of Sentence

(a) Generally. No later than 60 days of the entry of judgment and sentence or, if a notice of appeal has already been filed under Rule 31, no later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed, the court may correct any unlawful sentence or one imposed in an unlawful manner.

(b) Appeal.

(1) *Noncapital Cases.* In noncapital cases, the party appealing a final decision under Rule 24.3 must file a notice of appeal with the trial court clerk no later than 20 days after entry of the decision in superior court cases, or no later than 14 days after entry of the decision in limited jurisdiction court cases.

(2) *Capital Cases.* In capital cases, after denying modification of a sentence of death, the court must order the clerk to file a notice of appeal from the denial.

(c) Mitigation. On motion of the defendant, or on the court's own motion, the court may mitigate a fine, surcharge under A.R.S. §§12-116.01 and 12-116.02, and an assessment under A.R.S. §12-116.08, contained in the judgment and sentence, other than a mandatory fine, due to defendant's financial circumstances. The court may also mitigate a surcharge if a mandatory fine is imposed. In deciding whether to mitigate a fine, surcharge or assessment, the court may consider any relevant evidence including:

(1) The impact of the fine on the ability of the defendant to pay the restitution.

(2) The extent of the financial hardship on the defendant or on the defendant's immediate family.

(3) Whether the defendant is receiving benefits pursuant to any of the following:

³ All statutory references to §12-112.08 may change as two bills in the 2018 legislative session enacted the same numbered statutes. Legislative Council will renumber one of the statutes, probably by mid-June. Petitioner will correct the reference, if necessary, in his Reply.

(A) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act.

(B) The Supplemental Nutrition Assistance Program (7 U.S. C. §§ 2011 through 2036c).

(C) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f).

(4) Whether the defendant is seeking, obtaining, or maintaining employment if legally permitted to do so or is attending school.

(5) The defendant's medical condition.

Rule 26.12. Defendant's Compliance with Monetary and Non-Monetary Terms of a Sentence

(a) Method of Payment--Installments. The court may permit the defendant to pay any fine, restitution, or other monetary obligation within a specified period of time or in specified installments. The defendant must pay restitution as promptly as possible, given the defendant's ability to pay.

(b) Method of Payment--to Whom. The defendant must pay a fine, restitution, or other monetary obligations to the court, unless the court orders otherwise. The court must apply the defendant's payments first to satisfy the restitution order and the payment of any restitution in arrears. The court must forward restitution payments to the victim as promptly as practicable.

(c) Failure to Pay a Monetary Obligation or to Comply with Court Orders.

(1) *Defendants Not on Supervised Probation.* If a defendant who is not on supervised probation fails to pay a fine, restitution, or other monetary obligation, or fails to comply with any other term or condition of sentence within the prescribed time, the court must promptly notify the State.

(2) *Defendants on Supervised Probation.* If a defendant who is on supervised probation fails to pay a fine, restitution, or other monetary obligation, or fails to comply with any other term or condition of probation within the prescribed time, the court must promptly notify the defendant's probation officer.

(3) *Court Action upon Failure of a Defendant to Pay a Fine, Restitution, or Other Monetary Obligation or to Comply with Court Orders.* If the defendant fails to timely pay a fine, restitution, or other monetary obligation, or otherwise fails to comply with a court order, and fails to respond to a court notice informing the defendant of the consequences and resolution options, the court may issue an arrest warrant or a summons and require the defendant to show cause why he or she should not be held in contempt. The court must issue a summons unless there is reason to believe a warrant is required to secure the defendant's appearance. A prosecutor who requests a warrant, or a judge who orders a warrant, must state the reasons for the issuance of a warrant rather than a summons.

(4) *Authority to Modify Monetary Obligation.* If the court finds the defendant's default is not willful and the defendant is unable to pay all or part of the monetary obligation, the court may mitigate the fine, surcharge under A.R.S. §§12-116.01 and 12-116.02, and an assessment under 12-116.08, other than a mandatory fine. The court may also mitigate a surcharge if a mandatory fine is imposed. In determining whether the defendant is unable to pay all or part of a financial sanction, the court may consider the factors listed in Rule 24.3(c).

(5) *Incarceration for Contempt.* If the court finds the defendant in contempt for failure to pay a monetary obligation or failure to comply with a court order, before ordering the defendant incarcerated for contempt, the court must determine that no reasonable measures other than incarceration are adequate to meet the State's interests and permit the defendant a reasonable period of time to pay the obligation in full or make other payment arrangements.

Rules of Court Procedure for Civil Traffic and Civil Boating Violations

Rule 24.1. Mitigation

On motion of the defendant, or on the court's own motion, the court may mitigate a civil penalty imposed pursuant to Title 28, Chapters 3, 5, 7, and 9, a surcharge under A.R.S. §§12-116.01 and 12-116.02, and an assessment under A.R.S. 12-112.08, if the person demonstrates that the payment would be a hardship on the person or on the person's immediate family. In deciding whether to mitigate a civil penalty, surcharge, or assessment, the court may consider any relevant evidence including:

(a) The extent of the financial hardship on the defendant or on the defendant's immediate family.

(b) Whether the defendant is receiving benefits pursuant to any of the following:

(1) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act.

(2) The Supplemental Nutrition Assistance Program (7 U.S. C. §§ 2011 through 2036c).

(3) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f).

(c) Whether the defendant is seeking, obtaining, or maintaining employment if legally permitted to do so or is attending school.

(d) The defendant's medical condition.